

Provided however, that the provisions of this section shall not apply to the retailing of flour direct to the consumer from bulk stock or to the bakery trade or to the exchanging of wheat for flour by mills grinding for toll and that nothing herein contained shall be held to apply to any wheat product packed and distributed as a specialty, in identified original package, the net contents of which weight is less than five (5) pounds.

Be it further enacted, that any violation of this Act shall be a misdemeanor and upon conviction, the offender shall be fined not less than twenty-five dollars (\$25.00) or more than five hundred dollars (\$500.00) for each offense.

Be it further enacted, that all acts or parts of acts in conflict herewith be repealed.

Be it further enacted, that this Act shall take effect immediately upon its passage; the public welfare requiring it.

Neither approved nor disapproved.

EFFECTIVE  
JUNE 14, 1934

CHAPTER 145.

CA 145A  
1936 Statute

AN ACT providing for the regulation and control of utilities with the Commonwealth of Kentucky as the word "utilities" is defined therein; creating a Public Service Commission and providing the qualifications, terms and methods and times of appointing the members and officers and employees of said commission, and defining its jurisdiction, powers and duties; providing for the assessment and collection of fees from utility companies to defray the cost of regulation and control including the salaries and traveling expenses, including hotel bills, of the commissioners, and of officers and employees, and office and other expenses of the commission; prescribing the duties and privileges of utility companies; providing penalties for violation of this act; providing for adequate court review; providing for the repeal of all laws or parts of laws in conflict therewith.

*Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

§ 1. *Definitions.*

(a) The term "corporation," when used in this act, includes private, quasi public and public corporations, an association, a joint stock association, or a business trust.

(b) The term "person," when used in this act, includes a natural person, a partnership, or two or more persons having a joint or common interest, and a corporation as hereinbefore defined.

(c) The term "utility" or "utilities," when used in this act, shall mean and include persons and corporations or their lessees, trustees or receivers that now or may hereafter own, control, operate or manage (1) any facility used or to be used for or in connection with the generation, production, transmission or distribution of electricity to or for the public for compensation for lights, heat, power or other uses; (2) any facility used or to be used for or in connection with the production, manufacture, storage, distribution, sale or furnishing to or for the public for compensation natural or manufactured gas, or a mixture of same, for light, heat, power or other uses; (3) any facility used or to be used for or in connection with the transporting or conveying of gas, crude oil or other fluid substance by pipe line to or for the public for compensation; (4) any facility used or to be used for or in connection with the diverting, developing, pumping, impounding, distributing or furnishing water to or for the public for compensation; (5) any facility used or to be used for or in connection with the transmission or conveyance over wire, in the air or otherwise, of any message either by telephone or telegraph for the public for compensation; (6) any facility used or to

be used for or in connection with the transportation of persons or property by street, suburban or inter-urban railways for the public for compensation:

(d) The term "facility" or "facilities" when used in this act, shall be construed in its broadest and most inclusive sense and shall include all property, real, personal, tangible and intangible, and all other means and instrumentalities in any manner, owned, operated, leased, licensed, or used, furnished or supplied for, by, or in connection with the business of any utility.

(e) The term "rate," when used in this act, shall mean and include the plural number as well as the singular, and every individual or joint rate fare, toll, charge, rental or other compensation for service rendered or to be rendered by any utility, and every rule, regulation, practice, act, requirement or privilege in any way relating to such rate, fare, toll, charge or other compensation, and any schedule or tariff, or part of a schedule or tariff thereof.

(f) The term "service," when used in this act, is used in its broadest and most inclusive sense, and includes every practice or requirement in any way relating to the service of any utility, including the voltage of electricity; the heat units, and pressure of gas; the purity, pressure and quantity of water, and in general the quality, quantity, and pressure of any commodity or product used or to be used for or in connection with the business of any utility.

(g) The term "commission," when used in this act, shall refer to and mean the Public Service Commission of Kentucky, unless otherwise indicated.

(h) The term "commissioner," when used in this act, shall mean one of the members of the commission.

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## § 2. *Public Service Commission Created.*

(a) For the purpose of regulating certain utilities and of carrying out the provisions of this act, an administrative body or commission is hereby established, to be known as the "Public Service Commission of Kentucky," which is hereby declared to be a body corporate with power to sue and be sued, and in its corporate name, as above designated, to adopt a corporate seal bearing the following inscription: "Public Service Commission of Kentucky," which seal shall be affixed to all writs and official documents, and to such other instruments as the commission may direct. All courts shall take judicial note of said seal.

### (b) *Commissioners; Appointment; Term of Office; and Salary.*

The Commission shall consist of three members who shall be appointed by the Governor with the advice and consent of the Senate. Not more than two of said commissioners shall belong to or be affiliated with the same political party. If the Senate shall not be in session when this act is approved or when any vacancy occurs, the original appointments, or any appointments made by the Governor to fill a vacancy, shall be subject to the approval of the Senate when convened. Within twenty days after the effective date of this act the Governor shall appoint a commissioner whose term shall expire on the second day of January, 1936; another whose term shall expire on the second day of January, 1937; and another whose term shall expire on the second day of January, 1938; and thereafter at the expiration of each term, a successor shall be appointed and confirmed for a period of four years. Vacancies for unexpired terms shall be filled in the same manner as original appointments, but the ap-

pointee shall hold only to the end of said unexpired term. The Commissioner whose term shall expire on the second day of January, 1938, shall be chairman of the commission, and thereafter the commissioner who has been longest in point of continuous service upon the commission shall act as chairman. The annual salary to be paid each commissioner shall be five thousand (\$5,000.00) dollars in the manner now provided by law for other state officers out of funds hereinafter provided for the maintenance of the commission.

(c) *Qualification.* Before entering upon the discharge of the duties of his office each commissioner shall take and subscribe to the constitutional oath of office, which oath in writing shall be recorded in the office of the Secretary of State. Each of said commissioners at the time of his appointment and qualification shall be a resident of the Commonwealth of Kentucky and shall have resided in this state for a period of at least three years prior to his appointment and qualification, and he shall also be a qualified voter therein and not less than twenty-five years of age. No person shall be eligible for appointment, nor hold the office of commissioner who holds any official relationship to any of the utilities enumerated in Section 1 of this act, or who owns any stocks or bonds therein, or who has any pecuniary interest therein. Nor shall any commissioner receive any rebate, pass, percentage of contract or other thing of value, either directly or indirectly, from any of such utilities. Nor shall any such commissioner during the term of his office hold any other office or employment under the government of the United States, this state, or of any political subdivision thereof, either of trust or of profit; nor shall he engage in any occupation or business

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inconsistent with his duties as such commissioner, but shall devote his entire time to the duties of his office. If any of said commissioners becomes a candidate for public office or becomes a member of any political party committee, his office as commissioner shall be vacated ipso facto. No member of the commission shall be eligible for election to any public office until the expiration of two (2) years after he ceases to be a commissioner.

(d) *Removal of Commissioners.* The Governor may remove any commissioner for cause, giving him a copy of the charges against him and an opportunity of being publicly heard in person or by counsel in his own defense upon not less than ten days notice. If such commissioner shall be removed, the Governor shall file in the office of the Secretary of State a complete statement of all charges against such commissioner and his findings thereon, together with a complete record of the proceedings. Provided any Commissioner so removed shall have a right of action in the courts of this state to determine whether or not such commissioner has been legally removed in accordance with the act.

(e) *Quorum.* A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the commission. No vacancy in the commission shall impair the right of the remaining commissioners to exercise all of the powers of the commission. The act of a majority of the commissioners shall be the act of the commission; but any investigation, inquiry, or hearing which the commission has power to undertake or hold may be undertaken or held before any commissioner or commissioners designated for that purpose by the commission. The evidence in any inves-

tigation, inquiry or hearing may be taken by the commissioner or commissioners to whom such investigation, inquiry or hearing has been assigned. Every finding, opinion, and order made by the said commissioner, commissioners, so assigned, pursuant to such investigation, inquiry or hearing, when approved or confirmed by the commission, shall be the finding, opinion, and order of the commission.

(f) *Office; Meetings.* The principal office of the commission shall be at the Capitol of the State in the city of Frankfort, and shall be open daily during usual business hours, Sundays and legal holidays excepted. The commission shall hold meetings at its principal office and at such other convenient places in the state as may be expedient or necessary for the proper performance of its duties.

§ 3. *Officers and Employees.*

(a) *Secretary: Appointment; Duties and Salary.* The commission shall appoint a secretary who shall hold office during its pleasure, who shall devote his entire time to the duties of his office and who shall receive an annual salary of four thousand (\$4,000.00) dollars, payable in the same manner as that of the members of the commission. It shall be the duty of the Secretary to keep a full and true record of all the proceedings of the commission, of all books, maps, documents, and papers ordered filed by the commission, and of all orders made by the commission or approved and confirmed by it, and ordered filed, and he shall be responsible to it for the safe custody and preservation of all such documents at its office. Under the direction of the commission, the secretary shall have general charge of its office, superintend its clerical business, and perform such other duties as the commission may prescribe. He shall have power and authority to admin-

ister oaths in all parts of the state, so far as the exercise of such authority is properly incidental to the performance of his duties or that of the commission. The secretary shall designate from time to time one of the clerks appointed by the commission to perform the duties of the secretary during his absence, and during such time the clerk so designated shall, at the office, possess the powers of the secretary of the commission.

(b) *Counsel: Appointment; Duties and Salary.* The attorney general shall appoint an additional assistant attorney general who shall be assigned by the attorney general to act as counsel for said commission. Said assistant attorney general shall be of at least thirty years of age, and shall have been a regular practicing attorney for more than eight years and shall be paid his salary of Four Thousand (\$4,000.00) Dollars per annum, payable in the same manner as that of the members of the Commission. It shall be the duty of the attorney general, together with said assistant attorney general to represent and appear for the commission in all action and proceedings involving any question under this act or under any order or act of the commission.

(c) *Additional Employees.* The commission, shall have power to employ during its pleasures, such clerks, stenographers, rate experts, agents, special agents, engineers, accountants, auditors, inspectors, experts, and other employees as it may deem to be necessary to carry out the provisions of this act, or to perform the duties and exercise the powers conferred by law upon the commission.

(d) *Compensation of Commissioners, Officers and Employees.* The compensation of such employees shall be fixed by the Commission and shall be

paid out of the funds hereinafter provided. In addition to the salaries hereinbefore fixed, the said commissioners, secretary, and employees of the commission shall be entitled to such expenses including hotel bills as may be incurred in traveling on business of the commission to be paid out of the fund hereinafter provided.

§ 4. *Powers and Duties of the Commission.*

a) *Jurisdiction.* The jurisdiction of the commission shall extend to all utilities in this commonwealth as enumerated in Section 1 of this act.

(b) *General Powers of the Commission.* The commission is hereby given power to investigate all methods and practices of such utilities to require them to conform to the laws of this commonwealth, and to all reasonable rules, regulations, and orders of the commission not contrary to law; and to require copies of all reports, rates, classifications and schedules in effect and used by such utilities to be filed with the commission, and also other information desired by the commission relating to any investigation or requirement. Provided, however, that the commission shall have no jurisdiction over rates that are now the subject of litigation before the Railroad Commission or in any court between any utility and any municipality of the State until after the expiration of two (2) years from the entry of final order in said litigation. The commission may compel obedience to its lawful orders by mandamus or injunction or other proper proceedings in the Franklin Circuit Court of this Commonwealth, or any other court of competent jurisdiction, and such proceedings shall have priority over all pending cases. Every order entered by the commission shall continue in force until the expiration of the time, if any, named by the commission in such order, or until revoked or modified by the commission, un-

less the same be suspended, or vacated in whole or in part by order or decree of a court of competent jurisdiction.

(c) *Powers of the Commission with Respect to Rates.*

(1) *Generally.* Whenever the commission after a hearing had upon reasonable notice, upon its own motion or upon complaint, as provided in Section 6 (a) of this act, finds that any existing rates, joint rates, tariffs, tolls or schedules are unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any of the provisions of this act, the commission shall by order require just and reasonable rates, joint rates, fares, tolls or schedules to be followed in the future in lieu of those found to be unjust, unreasonable, insufficient or unjustly discriminatory or otherwise in violation of any of the provisions of this act.

(2) *Changes in Rates.* No change shall be made in any rate except upon twenty days' notice to the commission, which notice shall plainly state the changes proposed to be made in the rates then in force and the time when the changed rates will go into effect; provided, that the commission upon application of any utility may prescribe a less time within which a reduction may be made.

(3) *Procedure When New Schedule of Rates is Filed.* Whenever any utility files with the commission any schedule stating a new rate or rates, the commission may either upon complaint as provided in section 6 (a) of this act, or upon its own motion, upon reasonable notice enter upon a hearing concerning the reasonableness of such rate or rates. Pending such hearing and the decision thereof, the commission, upon filing with such schedule and delivering to the utility affected thereby a statement in writing of its reason therefor, may at any time

before such rate or rates become effective suspend the operation of such rate or rates, but not for a longer period than one hundred and twenty days beyond the time when such rate or rates would otherwise go into effect, unless the commission shall find that a longer time shall be necessary, in which case the commission may extend the period for not to exceed an additional one hundred and twenty days; provided and notwithstanding any such order of suspension, such utility may put such suspended rate or rates into effect upon the date when it or they would have become effective if not so suspended, by filing with the commission a bond in reasonable amount, approved by the commission, and conditional upon the refund to the persons entitled thereto of the amount of the excess, if the rate or rates so put into effect are finally determined to be excessive.

If the utility fails to make refund within sixty days after such final determination, any party entitled to such refund may, after ten days written demand and failure upon the part of the utility to make such refund, sue therefor in any court of competent jurisdiction of this state, and be entitled to recover in addition to the amount of the refund due, legal interest, court costs, and reasonable attorney's fees, but no suit may be maintained for that purpose unless instituted within one year after such final determination. Any number of persons entitled to such refund may join as plaintiffs in a single action, in which action the court shall render a judgment severally for each plaintiff as his interest may appear.

(d) *Unit Rate Base.* In any such rate investigation, where the utility serves two or more municipalities, the commission may, in computing the rate of return on the property used and useful, take as the

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base for such computation the valuation of the system as a whole, but there may be a differential in the case of an individual municipality in proportion to the increased cost of service, if the said utility company can show that such a differential should be allowed.

(e) *Service, Equipment, Facilities to Be Fixed by the Commission.* Whenever the commission, after a hearing upon reasonable notice had upon its own motion or upon complaint as provided in section 6 (a) of this act, shall find that the rules, regulations, practices, equipment, appliances, facilities or service of any utility, or the method of manufacture, distribution, transmission, storage or supply employed by it, are unjust, unreasonable, unsafe, improper, inadequate or insufficient, the commission shall determine the just, reasonable, safe, proper, adequate, or sufficient rules, regulations, practices, equipment, appliances, facilities, service or methods to be observed, furnished, constructed, enforced or employed, and shall fix the same by its order, rule or regulation. The commission shall prescribe rules and regulations for the performance of any service or the furnishing of any commodity of the character furnished or supplied by any utility, and, on proper demand and tender of rates, such utility shall furnish such commodity or render such service within the time and upon the conditions provided in such rules.

(f) *Valuation.* The commission may on hearing, after reasonable notice, ascertain and fix the value of the whole or any part of the property of any utility in so far as the same is material to the exercise of the jurisdiction of the commission, and make revaluations from time to time and ascertain the value of all new construction, extensions, and additions to the property of such utility. In arriv-

ing at a valuation of property of any utility as provided in this section, the commission shall give due consideration to the history and development of the utility and its property, original cost, cost of reproduction as a going concern, and other elements of value recognized by the law of the land for rate making purposes. Provided, the right of the commission to value and revalue the property of any utility shall not be exercised unless same is necessary or advisable to determine the legality or reasonableness of any rate, service or issuance of any security or securities, and then only after an investigation affecting same has been instituted by the commission or upon complaint or application.

(g) *Authority to Enter Premises.* The commissioners and the officers and employees of the commission may, during all reasonable hours, enter upon any premises of any utility for the purpose of examining any books or records, or for making any examination or test, or for exercising any power provided for in this act, and may set up and use on such premises apparatus and appliances necessary for any such examination or test. Such utility shall have the right to be represented at the making of any such examination or test or inspections.

(h) *Investigations.* The commission may, whenever it may be necessary in the performance of its duties, investigate and examine the condition of any utility. In conducting such investigation, the commission may proceed either with or without a hearing as it may deem best, but it shall make no order without affording the parties affected thereby a hearing.

(i) *System of Accounts.* The commission may establish a system of accounts to be kept by utilities or may classify utilities and establish a system of accounts for each class and prescribe the manner

in which such accounts shall be kept. Provided, the system shall as nearly as may be consistently possible conform to the Uniform System of Accounts as prescribed by the National Association of Railway and Utilities Commissioners, except that the system to be established for telephone and telegraph companies shall conform as nearly as practicable to the system adopted or approved by the Interstate Commerce Commission, or other Federal regulatory body, for the said telephone and telegraph companies.

(j) *Records and Reports.* The books, accounts, papers and records of every utility shall be available to the commission for inspection and examination. If said books, accounts, papers and records are not within the state, the commission may by notice and order require the production of same or, at its option, verified copies in lieu thereof, at such time and place as it may designate, so that an examination may be made by the commission. Provided, in the latter instance any expense incurred shall be borne by the utility so ordered. Every utility, when and as required by the commission, shall file with the commission such annual or other reports or information as the commission shall reasonably require. The commission shall prepare and distribute to such utilities blank forms for any information required under this act. All such reports shall be under oath when required by the commission.

(k) *Issuance of Securities; Issuance or Guarantee of Securities by the Utility.* From and after one hundred and twenty days after the appointment and qualification of the three commissioners herein provided for, no utility shall issue any securities, notes, bonds, stocks or other evidence of indebtedness, or assume any obligation or liability as lessor, lessee, guarantor, indorser, surety, or

otherwise in respect to the securities, notes, bonds, stocks or other evidence of indebtedness, of any other person or corporation unless and until, and then only to the extent that, upon application by the utility, and after investigation by the commission of the purposes and uses of the proposed issue and the proceeds thereof, or of the proposed assumption of obligation or liability in respect of the securities, notes, bonds, stocks or other evidence of indebtedness, of any other person, or corporation, the commission, by order, authorizes such issue or assumption. The commission shall make such order only if it finds that such issue or assumption (a) is for some lawful object within the corporate purposes of the utility; (b) is necessary or appropriate for or consistent with the proper performance by the utility of its service to the public as such utility and will not impair its ability to perform that service; and (c) is reasonably necessary and appropriate for such purpose. Any such order of the commission shall specify that such securities, notes, bonds, stocks or other evidence of indebtedness, or the proceeds thereof, shall be used only for the lawful purposes, as specified in the application, of such utility.

The commission shall have power by its order to grant or deny the application, provided for in the preceding paragraph hereof, as made, or to grant it in part, or deny it in part, or to grant it with such modification and upon such terms and conditions as the commission may deem necessary or appropriate in the premises.

Every application for authority for such issue or assumption shall be made in such form as the commission may prescribe. Every such application and every certificate of notification hereinbefore provided for, shall be made under oath, signed and filed

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on behalf of the utility by its president, a vice-president, auditor, comptroller, or other executive officer having knowledge of the matters therein set forth and duly designated for that purpose by the utility.

Nothing herein shall be construed to imply any guarantee or obligation as to such securities, notes, bonds, stocks or other evidence of indebtedness, on the part of the state of Kentucky.

The provisions of this act shall not apply to notes issued by a utility for proper purposes and not in violation of law, payable at periods of not more than two years from the date thereof, and shall not apply to like notes issued by a utility, payable at a period of not more than two years from date thereof, to pay, retire, discharge, or refund in whole or in part any such note or notes, and shall not apply to renewals thereof from time to time, not exceeding in the aggregate, six years from the date of the issue of the original note or notes so renewed or refunded. Nothing contained in this act shall be construed as limiting the power of any court having jurisdiction to authorize or cause receivers certificates or debentures to be issued according to the rules and practice obtaining in receivership proceedings in courts of equity.

The commission may require periodical or special reports from each utility hereafter issuing any security, notes, bonds, stocks, or other evidence of indebtedness, which shall show in such detail as the commission may require, the disposition made of such securities, notes, bonds, stocks, or other evidence of indebtedness, and the application of the proceeds thereof.

Securities, notes, bonds, stocks, or other evidence of indebtedness issued, and obligations and liabilities assumed by a utility, for which, under the provisions of this act, the authorization of the commission is

required, shall not be contrary to any term or condition of such order of authorization entered prior to such issuance or assumption. Securities, notes, bonds, stocks or other evidence of indebtedness issued, or obligations or liabilities assumed, in accordance with all the terms and conditions of the order of authorization therefor, shall not be affected by a failure to comply with any provision of this act or rule or regulation of the commission relating to procedure and other matters preceding the entry of such order of authorization or order supplemental thereto. A copy of any order made and entered by the commission as provided in this act, duly certified by the secretary of the commission, approving the issuance of any securities, notes, bonds, stocks or other evidence of indebtedness, or the assumption of any obligation or liability by a utility, shall, in and of itself, be sufficient evidence for all purposes of full and complete compliance by the applicant for such approval with all procedural and other matters required precedent to the entry of such order. Any utility which issues any such securities, notes, bonds, stocks or other evidence of indebtedness, or assumes any such obligation or liability, or makes any sale or other disposition of securities, notes, bonds, stocks or other evidence of indebtedness, or the proceeds thereof, for purposes other than the purposes specified in the order of the commission with respect thereto, shall be liable to a penalty of not more than ten thousand (\$10,000.00) dollars, but such utility is only required to specify in general terms the purpose for which any securities, notes, bonds, stocks, or other evidence of indebtedness, are to be issued, or for which any obligation or liability is to be assumed and the order of the commission with respect thereto shall likewise be in general terms. The willful act of any officer, agent, or employee of a

utility, acting within the scope of his official duties or employment, shall for the purpose of this section be deemed to be the willful act of the utility. All applications for the issuance of securities, notes, bonds, stocks, or other evidence of indebtedness or assumption of liability or obligation shall be placed at the head of the commission's docket and disposed of promptly, and all such applications shall be disposed of in sixty days after the same are filed with the commission, unless it is necessary for good cause to continue the same for a longer period for consideration, whenever such application is continued beyond sixty days after the time it is filed, the order making such continuance must state fully the facts necessitating such continuance. Provided, the provisions of this section shall not apply in any instance where the issuance of such securities, notes, bonds, stocks or other evidence of indebtedness are subject to the supervision or control of the Federal government, or any agency thereof. However, where an application is filed or is pending before the Federal government, or any agency thereof, the commission may, in its discretion, appear as a party to the proceeding if the issuance of such securities by the Federal government or any agency thereof, will materially affect any utility over which the Commission has jurisdiction.

(1) *Public Convenience and Necessity.* No utility, person or corporation shall begin the construction, of any plant, equipment, property or facility for furnishing to the public any of the services enumerated in Section 1 of this act, except ordinary extensions of existing systems in the usual course of business, unless and until it shall have obtained from the commission a certificate that public convenience and necessity require such construction.

Upon the filing of any application for such a certificate, and after a public hearing of all parties interested, the commission may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, such a certificate of convenience and necessity. Unless exercised within a period not exceeding one year from the grant thereof, exclusive of any delay due to the order of any court or to failure to obtain any grant or consent, the authority conferred by the issuance of the certificate of convenience and necessity shall be null and void, but the beginning of any new construction or facility in good faith, within the time prescribed by the commission and the prosecution of the same with reasonable diligence, shall constitute a compliance with such certificate. Any person or group of persons may come before the commission and by petition ask that any utility be compelled to make any reasonable extensions, and the commission shall proceed to hear and determine the reasonableness of such an extension and whether the petition should be sustained either in whole or in part.

No utility shall henceforth exercise any right or privilege under any franchise or permit hereafter granted, or under any franchise or permit heretofore granted, the exercise of which has been voluntarily suspended or discontinued for more than one year, without first obtaining from the commission a certificate that public convenience and necessity require the exercise of such right or privilege. Further, no utility shall, from the time this act becomes effective, apply for or obtain any franchise, license or permit from any municipality, or other governmental agency, until the commission has granted to the said utility a certificate of necessity and convenience showing that there is a demand and need for the service sought to be rendered.

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All carriers or conveyers of electricity or electric power are hereby declared to be common carriers and subject to the obligations incident thereto.

(m) *Test of Meters.* The commission may provide instruments for and carry on the examination and testing of any and all appliances used for the measurement of any product or service of any utility or for the examination and testing of any devices or appliances of such utility used for testing for accuracy any and all appliances used for the measurement of any product or service of such utility. Any consumer or user may have such appliance tested upon payment of the fees fixed by the commission. The commission may declare and establish reasonable fees to be paid for testing such appliances on the request of the consumer or user, the fees to be paid by the said consumer or user at the time the request is made, but to be paid by the utility and repaid to the consumer or user if the appliance be found commercially defective or inaccurate to the extent or more than two per cent to the disadvantage of the consumer or user.

(n) *Authority of the Commission to Change Contract Rates.* The commission shall have power, under the provisions of this act, to enforce, originate, establish, change and promulgate any rate, rates, joint rates, charges, tolls, schedules or service standards of any utility, subject to the provisions of this act, that are now fixed or that may in the future be fixed, by any contract, franchise or otherwise, between any municipality and any such utility, and all rights, privileges and obligations arising out of any such contracts and agreements regulating any such rates, charges, schedules or service standards, shall be subject to the jurisdiction and supervision of the commission; provided, however, that no such rate, charge, schedule or service standard shall be

changed, nor any contract or agreement affecting same shall be abrogated or changed until and after a hearing has been had before the commission in the manner prescribed in this act.

Nothing in this section or elsewhere in this act contained is intended or shall be construed to limit or restrict the police jurisdiction, contract rights, or powers of municipalities or political subdivisions, except as to the regulation of rates and service, exclusive jurisdiction over which is lodged in the Public Service Commission.

§ 5. *Duties and Privileges of Utilities, Subject to the Regulation of the Commission.*

(a) *Rates.* It shall be lawful for every utility: To demand, collect, and receive fair, just and reasonable prices, rates, fares, tolls, charges, or other compensation for each and every service rendered or to be rendered by it to any person or corporation.

To employ in the conduct and management of its business, suitable and reasonable classifications of its service, patrons, and rates; and such classification may, in any proper case, take into account the nature of, the use, and quality used, the time when used, the purpose for which used, and any other reasonable consideration.

(b) *Service.* Every utility shall furnish adequate, efficient and reasonable service and may establish reasonable rules and regulations governing the conduct of its business and the conditions under which it shall be required to render service.

(c) *Schedules.* Under such rules and regulations as the commission may prescribe, every utility shall file with the commission, within such time and in such form as the commission may designate, schedules showing all rates established by it and collected or enforced. The utility shall keep copies of such schedules open to public inspection under

such rules and regulations as the commission may prescribe.

(d) *Adherence to Schedule.* No utility shall directly or indirectly, by any device whatsoever or in any wise, charge, demand, collect or receive from any person a greater or less compensation for any service rendered or to be rendered by such utility than that prescribed in the schedule, or schedules, of such utility, applicable thereto, then filed in the manner prescribed in this act; nor shall any person receive or accept any service from any utility for a compensation greater or less than that prescribed in such schedules.

(e) *Discrimination.* No utility shall as to rates or service make or grant any unreasonable preference or advantage to any corporation or person or subject any corporation or person to any unreasonable prejudice or disadvantage. Provided, that nothing herein contained shall prevent any utility from granting free or reduced rate service to its officers, agents or employees, including physicians and attorneys, or the exchange of such free or reduced rate service between any utility and other utility for their respective officers, agents and employees, including physicians and attorneys; nor to prevent any utility from granting free or reduced rate service to the United States, or to charitable and eleemosynary institutions and persons engaged in charitable and eleemosynary work; nor to prevent any utility from granting free or reduced rate service with the object and for the purpose of providing relief in times and cases of flood, general epidemic, pestilence or other calamitous visitation. The terms "officers" and "employees" shall include furloughed, pensioned and superannuated officers and employees, and persons who have become disabled or infirm in the service of such utility. Further, notice

must be given the commission and its agreement obtained for such reduced rate service, except in case of an emergency in which instance the commission shall be notified at least five days after such service is rendered. No utility shall establish or maintain any unreasonable difference as to rates or service either as between localities or as between classes of service for doing a like or contemporaneous service under the same or substantially the same conditions. The commission may determine any question of fact arising under this section.

§ 6. *Procedure.*

(a) *Complaints.* Upon a complaint in writing made against any utility by any mercantile, agricultural or manufacturing society, or by any body politic or municipal organization, or by any public utility, or by ten persons, firms, corporations or associations, all of which persons, firms, corporations or associations shall be customers of the utility complained of, or ten complainants of all or any of the aforementioned classes, that any of the rates, tolls, charges or schedules or any joint rate or rates in which such petitioner is directly interested, are in any respect unreasonable or unjustly discriminatory, or that any regulation, measurement, practice or act whatsoever affecting or relating to the service of any utility or any service in connection therewith is in any respect unreasonable, unsafe, insufficient or unjustly discriminatory, or that any service is inadequate or cannot be obtained, the commission shall proceed upon such complaint or upon its own motion, with or without notice, to make such investigation as it may deem necessary or convenient. But no order affecting said rates, tolls, charges, schedules, regulations, measurements, practice or act complained

of, shall be entered by the commission without a formal public hearing.

(b) *Hearings.* The commission shall fix the time and place for hearings, if any are required, and shall serve notice thereof upon the utility and complainant, not less than twenty days before the time set for such hearings. The commission may dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest or for the protection of substantial rights.

All hearings and investigations before the commission or any member thereof shall be governed by rules adopted by the commission, and in the conduct thereof, neither the commission nor such member shall be bound by the technical rules of legal evidence.

At the time fixed for any hearing before the commission or a commissioner, or the time to which same may have been continued, the complainant and the person complained of shall be entitled in person or by attorney to be heard and to introduce evidence.

(c) *Service of Orders.* The Commission shall deliver a certified copy of any order issued by it to all parties to any proceeding before it in which the order was made and to an officer or agent of the utility affected thereby.

(d) *Rehearing.* After a determination has been made by the commission in any hearing, any party to the proceedings may, within twenty days after the service of the order upon it, apply for a rehearing in respect of any matters determined in said proceedings and specified in the application for rehearing, and the commission may grant and hold such hearing on said matters. The commission shall either grant or refuse an application for rehearing within twenty days after the filing of same. Failure

by the commission to act upon such application within that period shall be deemed a refusal thereof. Notice of such hearing shall be given as required with respect to original hearings. Upon such rehearings any party may offer additional evidence which could not, with reasonable diligence have been offered on the former hearing. Upon such rehearing, the commission may change, modify, vacate, or affirm its former orders, and make and enter such order as it may be deemed necessary.

(e) *Process.* The commission and each of the commissioners may issue subpoenas, subpoenas duces tecum, and all necessary processes in proceedings pending before, or initiated by the commission, and such process shall extend to all parts of the state. Service of process in all hearings, investigations and proceedings pending before the commission, or initiated by it, may be made by registered mail, or as other process in civil cases, as the commission may direct.

(f) *Witnesses.* The commission and each of the commissioners, for the purposes mentioned in this act, may administer oaths, examine witnesses, and certify official acts. In case of a failure on the part of any person or persons to comply with any lawful order of the commission, or of any commissioner, or with process, or in the case of the refusal of any witness to testify concerning any matter on which he may be interrogated lawfully, any circuit court or a judge thereof may, on application of the commission, or of a commissioner, compel obedience by proceedings for contempt as in the case of disobedience of the requirements of a subpoena issued from such court, or a refusal to testify therein. Witnesses who are summoned before the commission, and witnesses whose depositions are taken pursuant to the pro-

visions of this act, and the officer taking the same, shall be entitled to the same fees as are paid for like services in circuit courts. Said fees in each instance are to be paid by the party in whose behalf the witness is subpoenaed.

(g) *Depositions.* The commission or any commissioner, or any party to the proceeding, may, in any investigation or hearing before the commission or any commissioner, cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for taking depositions in civil actions.

(h) *Privilege and Immunity.* No person shall be excused from testifying or from producing any book, document, paper, or account at any inquiry by, or hearing before, the commission or any commissioner, when ordered to do so, upon the ground that the testimony or evidence, book, document, paper or account required of him may tend to incriminate him or subject him to penalty or forfeiture, but no person shall be prosecuted, punished, or subjected to any forfeiture or penalty for, or on account of, any act, transaction, matter or thing concerning which he shall have been compelled under oath to testify or produce documentary evidence, provided that no person so testifying shall be exempt from prosecution or punishment for any perjury committed by him in his testimony.

(i) *Certified Copies; Evidence.* Copies of official documents and orders filed or deposited according to law in the office of the commission, and certified by a commissioner, or by the secretary under the seal of the commission, to be true copies of the originals, shall be evidence in like manner as the originals, in all matters before the commission and in courts of competent jurisdiction.

(j) *Recording Orders.* Every order, finding, authorization or certificate issued or approved by the commission under any provisions of this act shall be in writing and entered on the records of the commission. A certificate under the seal of the commission that any such order, findings, authorization, or certificate has not been modified, stayed, suspended or revoked, shall be received as evidence in any proceeding as to the facts stated therein.

(k) *Record of Proceedings.* A full and complete record shall be kept of all contested proceedings had before the commission or any commissioner on any formal hearing, and all testimony shall be taken down by a reporter appointed by the commission.

§ 7. *Court Review.*

(a) Any party to a proceeding before the commission, or any utility affected by an order of the commission, may within twenty days after service upon it of the commission's order or from the time when the commission has failed to act within the period prescribed in Section 6 (d), commence an action in the circuit court for Franklin County or any other court of competent jurisdiction against the commission as defendant to vacate or set aside such order or determination on the ground that it is unlawful or unreasonable.

If a petition for rehearing has been made as provided in Section 6 (d) of this act, the right to commence an action against the commission shall be continued for a period of twenty days from the service of the final order in such rehearing upon the party desiring to commence the action.

(b) *Answer.* The answer of the commission thereto shall be served and filed within twenty days after service of the complaint whereupon said action

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shall be at issue and stand ready for trial upon ten days' notice to either party on the equity side of the docket of the said court. It shall not be necessary in the answer to deny verbatim the allegations of the petition, but a general denial thereof on behalf of the commission may be sufficient.

(c) *Injunction.* Injunctive relief may be granted by the Court in the manner and upon the terms prescribed by law.

(d) *New Evidence.* No evidence shall be received at the hearings on review, but if any party shall satisfy the court that evidence has been discovered since the hearing before the commission that could not have been obtained for use at that hearing by the exercise of reasonable diligence, and will materially affect the merits of the case, the court may, in its discretion, remand the record and proceedings to the commission, with directions to take such after discovered evidence, and after consideration thereof enter and file such order as shall, in the opinion of the commission, be reasonable and in conformity with law, from which a right of review shall lie as in the case of any other final order.

(e) *Transcripts.* If action is commenced against the commission because of an order made in any proceedings before it, the commission shall promptly cause a certified transcript of all proceedings had and testimony taken therein to be made and filed with the clerk of the court where the action is pending. The cost of preparing and certifying such record shall be paid to the commission, by the appellant or appellants, and taxed as part of the costs in the case to be paid as directed by the court upon final determination of the action. Copies of such transcript shall be furnished to any party to the proceeding at cost.

(f) *Burden of Proof.* In all trials, actions or proceedings arising under the provisions of this act or growing out of the exercise of the authority or powers granted hereunto the commission, the burden of proof shall be on the party adverse to the public service commission seeking to set aside any determination, requirement, direction or order of said commission, to show by clear and satisfactory evidence that the determination, requirement, direction or order of the commission complained of is unreasonable or unlawful.

(g) *Submission of Evidence to Circuit Court.* The case shall be heard and decided by the Circuit Court upon the evidence submitted to the Commission as shown by the transcript provided for in Subsection (e) of this Section 7. Upon final submission the Circuit Court shall enter a decree either sustaining the order of the Commission or setting aside and vacating same in whole or in part.

(h) *Appeal to the Court of Appeals.* Either party to said action, within sixty days after the entry of the order of judgment of the circuit court, may appeal to the Court of Appeals of Kentucky, and such appeal, upon the filing thereof in the office of the Clerk of the Court of Appeals, shall be docketed and advanced in similar manner as Commonwealth cases.

§ 8. *Assessment for Maintaining Commission, and How Apportioned.*

(a) For the purpose of maintaining the commission hereby established, including the payment of salaries, traveling expenses, including hotel bills, printing, rent, light, heat, water, telephone, and all other overhead expenses and the expense of regulation and supervision by the commission of the utilities enumerated in section 1 of this act, said utilities

shall within thirty days after the effective date of this act pay to the State Treasurer of the Commonwealth of Kentucky a sum equal to one-twentieth of one per centum of the total value that has been assessed against the property of said utilities for the year ending December 31, 1932. This fund shall be credited to the account of the commission and shall be used to defray the cost of regulation for the year following the effective date of this act.

Within thirty days after this act has been in effect for one year, each of said utilities shall pay a sum equal to one twentieth of one per centum of the total value that has been assessed against the property of such utility for the year ending December 31, 1933. This fund shall be credited to the account of the commission and shall be used to defray the cost of regulation for the second year the commission is in existence.

Within thirty days after this act has been in effect for two years, each of the said utilities shall pay to the Treasurer of the Commonwealth of Kentucky a sum equal to one twentieth of one per centum of the total value that has been assessed against the property of such utility for the year ending December thirty-first, 1934; provided, however, that in this latter instance such assessment shall be prorated so as to cover only that portion of the calendar year and only for those months between the date when this act has been in effect for two years and the first of July, 1936. This fund shall be paid to the Treasurer of the Commonwealth of Kentucky and credited to the account of the commission and shall be used to defray the expense of regulation during that portion of the calendar year heretofore specified.

The cost of regulation after the first of July, 1936, shall be apportioned and assessed among the utili-

ties in the manner hereinafter provided in this section.

(b) On or before July first, 1936, and on or before July first of each year thereafter, such expense of maintaining said commission shall be apportioned among and assessed upon said utilities by the commission in proportion to the gross earnings or receipts of such utilities derived from intrastate business for the next preceding calendar year in which the assessments are made, providing, however, that the total amount so assessed shall not in any year exceed seventy-five thousand (\$75,000.00) dollars. All such fees for the maintenance of the commission shall be paid to the Treasurer of the Commonwealth of Kentucky on or before the first day of July, 1936, and on or before the first day of July of each year thereafter.

(c) In no event, however, shall the sum to be paid by any such utility for the maintenance of the commission be less than twenty-five dollars in any one year.

(d) To ascertain the amount of the assessment provided for in paragraph (b) of this section, each of said utilities shall, on or before March 31, 1936, and on or before March 31st of each succeeding year thereafter, file with the commission a report of its gross earnings or receipts derived from intrastate business for the preceding calendar year, and within sixty days after the final date for such filing, the commission shall notify each of said utilities of the sum assessed against and to be paid by it as hereinbefore provided.

(e) In respect to the assessment provided for in paragraph (b) of this section, the commission shall on or before June 1, 1936, and on or before June first of each succeeding year thereafter, certify to the

auditor of the state the amount of such assessment apportioned by it to each of said utilities, and he shall certify such amount to the treasurer of the state, who shall collect and pay same into the state treasury to the credit of a special fund for the maintenance of such public service commission.

(f) Should an amount of the sums paid by such utilities for the maintenance of the commission in excess of two thousand (\$2,000.00) dollars remain unexpended in the treasury at the end of any fiscal year, such amount so unexpended shall be applied pro rata on the same basis that the amounts of such payments were determined in said year, in the reduction of the payment to be made by such utility for the next ensuing fiscal year for the maintenance of the commission.

(g) All expenses incurred in the administration of this act shall be paid out of the public utility account in the treasury on the auditor's warrant for the payment of bills itemized and certified as correct by the secretary of the commission.

(h) Any such utility failing to make payment as herein provided for the maintenance of said commission shall forfeit and pay to the state one thousand (\$1,000.00) dollars, and twenty-five dollars for each day such utility refuses, neglects or fails to make such payment, which forfeiture shall not release such utility from the payment of such assessment.

(i) The payment of said assessments, as provided in this section, shall be in lieu of all other such fees or assessments that may now or hereafter be levied by any municipality or other political subdivision for the control or regulation of utilities.

§ 9. *Penalties.*

Every officer, agent or employee of any utility as enumerated in section 1 hereof, or other person who shall willfully violate any provision of this act, or who procures, aids or abets any violation of this act by any such utility shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one thousand (\$1,000.00) dollars, or be confined in jail not more than six (6) months, or both; and if any such utility shall be a private corporation and shall violate any of the provisions of this act, or shall do any act herein prohibited, or shall fail and refuse to perform any duty imposed upon it under this act for which no penalty has been provided by law, or who shall fail, neglect or refuse to obey any lawful requirement or order made by the commission, for every such violation, failure or refusal such utility shall forfeit and pay into the treasury a sum not less than twenty-five (\$25.00) dollars, nor more than one thousand (\$1,000.00) dollars, for each such offense, said sum or sums to be paid to the Treasurer and credited to the general fund. In construing and enforcing the provisions of this section the act, omission or failure of any officer, agent or other person acting for or employed by any utility acting within the scope of his employment shall in every case be deemed to be the act, omission or failure of such utility.

Actions to recover the principal amount due and penalties under this Act shall be brought in the name of the Commonwealth of Kentucky in the Franklin Circuit Court. Whenever any utility is subject to a penalty under this Act, the commission shall certify the facts to the Commission Counsel who shall institute and prosecute an action for recovery of such principal amount due and the pen-

alty, provided the commission may compromise such action and dismiss the same on such terms as the court will approve. The principal amount due shall be paid into the State Treasury and credited to the Commission's account, but all penalties recovered by the Commonwealth of Kentucky in such action shall be paid into the State Treasury and credited to the general fund.

§ 10. *Construction of Act.*

All laws or parts of laws in conflict with the provisions of this act are hereby repealed. Each section of this act is hereby declared to be separate and independent of every other section thereof, and, if for any reason any section or provision of this act shall be held to be unconstitutional or invalid, no other section or provision of this act shall be affected thereby, as the remaining parts of the act would have been passed by the General Assembly if such unconstitutional or invalid section or provision, if any, had been stricken out before the passage of this act by the General Assembly.

Neither approved nor disapproved.

CHAPTER 146.

AN ACT to prohibit the manufacture, sale, transportation, possession or other disposition of spirituous, vinous or intoxicating malt liquors, except for medicinal, sacramental, scientific or mechanical purposes; providing for the manufacture, sale, transportation, possession or other disposition of spirituous, vinous and intoxicating malt liquors for medicinal, sacramental, scientific or mechanical purposes; providing an appropriation of funds for the administration and enforcement of this act; providing for local option elections on the prohibition of the manufacture, sale, transportation, possession or other disposition of spirituous, vinous or intoxicating malt liquors; providing for license taxes on and permit fees for the manufacture, sale, transportation, possession or other disposition for medicinal, sacramental, scientific or mechani-

90 days  
after and  
B. Legro  
Possession